

HOUSE BILL REPORT

SHB 2426

As Passed Legislature

Title: An act relating to duties of the utilities and transportation commission, including commissioner appointments, delegation of powers, and appointment of administrative law judges.

Brief Description: Modifying utilities and transportation commission provisions.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris; by request of Utilities & Transportation Commission).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/20/06, 2/2/06 [DPS].

Floor Activity:

Passed House: 2/14/06, 97-0.

Passed Senate: 3/3/06, 40-9.

Passed Legislature.

Brief Summary of Substitute Bill

- Creates a process for *pro tem* commissioners to be appointed to the Washington Utilities and Transportation Commission (WUTC).
- Allows WUTC to delegate certain duties to designated assistants.
- Authorizes the WUTC to appoint administrative law judges as exempt employees.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Ericks, Hankins, Hudgins, Nixon, P. Sullivan, Sump, Takko and Wallace.

Staff: Kara Durbin (786-7133).

Background:

The Washington Utilities and Transportation Commission (WUTC) is a quasi-judicial and quasi-legislative state agency that regulates the rates, services, and practices of privately

owned utilities and transportation companies. The WUTC is led by three commissioners appointed by the Governor and confirmed by the Senate for staggered six-year terms.

If a commissioner position should become vacant, the Governor may appoint a replacement subject to the confirmation process. However, there is no provision for the appointment of pro tem commissioners that can serve for a specified time or on a particular case. This is unlike the court system, which is permitted to appoint *pro tem* judges.

When the WUTC initiates a complaint against a regulated company, it must be preceded by a determination of probable cause by the commissioners. The determination is based on evidence provided by staff. If probable cause is found, the complaint will be heard by the same commissioners at an adjudicative hearing.

Commissioners personally preside in adjudicative hearings or they make final decisions based on the initial determinations of administrative law judges (ALJs). Under current law, the WUTC must enter an order confirming the result of initial orders, even if no appeal is sought.

Two to three times a month, the WUTC convenes regularly scheduled meetings, called "open meetings," to process various filings. During an open meeting, commission staff present their analyses and recommend orders on various agenda items. According to the WUTC, the majority of items are uncontested and require little discretion on the part of the commissioners.

Unlike ALJs at some agencies, such as the Office of Administrative Hearings, Department of Health, and the Environmental Hearings Office, the ALJs at the WUTC are not exempt from civil service provisions.

Summary of Substitute Bill:

A process for the appointment of pro tem commissioners is established. At the request of the WUTC, the Governor may appoint a pro tem commissioner to allow a commissioner whose term has expired to complete an adjudicative proceeding that he or she has substantially heard.

The WUTC is given delegation authority for certain duties. Commissioners may delegate responsibility to designated assistants for "any of the powers and duties vested in or imposed upon the commission by law," except matters governed by the Administrative Procedures Act, chapter 34.05 RCW. A matter may not be delegated to any person who has worked as an advocate on the same docket. All matters will still be heard or reviewed by the commissioners upon request of an affected party.

Provisions concerning final orders and the civil service status of ALJs are specified. In general, initial orders of ALJs will become final if no review is sought. Commissioners may appoint ALJs that are exempt from the civil service law, but they are still subject to discipline and termination for cause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The purpose of the bill is to increase the efficiency of the WUTC and to improve the quality of justice in proceedings before the WUTC. It is important to provide continuity when a commissioner's term ends. It is inefficient for new commissioners to start all over again – it prolongs the litigation and increases the cost. This also addresses situations where a commissioner is absent for an extended period of time. Being able to delegate authority to an ALJ for probable cause hearings will be more efficient. We want ALJ salaries to be competitive with other state agencies.

(With concerns) We are working over in the Senate on an amendment to limit the delegation of authority language in order to minimize the potential for conflicts of interest to arise. With that change, we fully support the bill. We agree with making ALJs exempt, but we have concerns with section 1 of the bill, which deals with appointment of pro tem commissioners. Most other quasi-judicial bodies do not have this special power to appoint pro tem commissioners.

Testimony Against: None.

Persons Testifying: (In support) Commissioner Mark Sidran, Utilities & Transportation Commission.

(With concerns) Tim Boyd, Industrial Customers of Northwest Utilities; and Terrence Stapleton, Washington Independent Telephone Association.

Persons Signed In To Testify But Not Testifying: None.